APPENDIX A.

Certiorari to the Colorado Court of Appeals

In the Supreme Court of The State of Colorado.

Rainsford J. Winslow, Petitioner, v. The Board of County Commissioners, Morgan County, State of Colorado, Robert Bauer, Commissioner, Henry Kammerzell, Commissioner, John Lindell, Commissioner, Respondents. No. 82 SC 310. No. 81 CA 1268.

Filed: September 27, 1982.

By the Supreme Court Sitting En Banc.

ON PETITION FOR WRIT OF CERTIORARI to the Court of Appeals.

After review of the record, the briefs and the opinion of the Court of Appeals.

IT IS ORDERED by this Court that said peition be, and the same hereby is, denied.

APPENDIX B.

Opinion

In the Colorado Court of Appeals.

Rainsford J. Winslow, Plaintiff-Appellant, v. The Board of County Commissioners, Morgan County, State of Colorado, Robert Bauer, Commissioner, Henry Kammerzell, Commissioner, John Lindell, Commissioner, Defendants-Appellees.

Opinion filed and Judgment entered on the 29th day of July, 1982.

Appeal from the District Court of Morgan County, The Honorable Carl J. Absmeier, Presiding.

Before: DIVISION III, Opinion by JUDGE KELLY, Smith and Kirshbaum, JJ., concur.

Plaintiff, Rainsford J. Winslow, appeals the dismissal of his declaratory judgment* action brought to nullify the Morgan County Zoning Resolution and the Morgan County Subdivision Regulations adopted by the Board of County Commissioners (Board) in January 1981. See C.R.C.P. 57(b). We affirm.

The Morgan County Commissioners placed a legal notice in the Fort Morgan Times and in the Brush News Tribune giving notice of a public hearing to be held before the Board on September 16, 1980. At the hearing the Board considered amendments to the current zoning plan which were comprehensive in nature and which could affect all zoned areas in the county. On January 27,

* Summary Judgment not Declaratory Judgment.

1981, the Board adopted the amendments to Zoning Resolution and the Subdivision Regulations of Morgan County.

Winslow contends that the notice published by the Board was inadequate because it did not conform to the statutory requirements for amendment of a zoning resolution contained in §30-28-116, C.R.S. 1973. He asserts that the notice was not written in lay terms, that it contained no specific recitation of the correct name of the present zone and the proposed future zones, that the purpose of the notice was vague, and that the notice failed to provide a "warning" that the rights of property owners would be affected.

Where, as here, the proposee amendment is intended to alter the original zoning plan in a comprehensive fashion and in a manner which would affect all zoned areas, the applicable statute is §30-29-112, C.R.S. 1973, rather than §30-28-116, C.R.S. 1973. Colorado Leisure Products, Inc. v. Johnson,

187 Colo. 443, 532 P.2d 742 (1975). Section 30-28-133, C.R.S. 1973, which concern subdivison regulations, also governs the amendment procedure in this case.

Secions 30-28-112 and 30-28-133, C.R.S. 1973, require the Board to hold a public hearing to consider amendments. At least thirty days prior to the hearing, the Board must announce the time and the place of the meeting in a newspaper of general circulation in the county. The notice must state the place at which the text and maps certified by the County Planning Commission may be examined. The notice published by the Board complied with each of these requirements.

The statute does not require the notice to be written in lay terms. Since the notice indicated that the zoning resolution revision and amendments concerned the whole of Morgan County, there was no need for the

notice to set forth seriatim the correct names of the present zones and the proposed future zones. Here, the notice was clear, definite, explicit, and not ambiguous. See Holly Development, Inc. v. Board of County Commissioners, 140 Colo. 95, 342 P.2d 1032 (1959). Since the purpose of the notice is to provide a warning to property owners,and the notice fulfilled the statutory requirements, no further "warning" was required.

The judgment is affirmed.

JUDGE SMITH and JUDGE KIRSHBAUM concur.

APPENDIX C.

Opinion

In the Colorado Court of Appeals.

Rainsford J. Winslow, Plaintiff-Appellant, v. The Board of County Commissioners, Morgan County, State of Colorado, Robert Bauer, Commissioner, Henry Kammerzell, Commissioner, John Lindell, Commissioner, Defendants-Appellees. No. 81 CA 1268

Opinion Modified and as Modified Petition for Rehearing DENIED, August 19, 1982.

Appeal from the District Court of Morgan County, The Honorable Carl J. Absmeier, Judge, Presiding.

Before: DIVISION III, Opinion by JUDGE KELLY, Smith and Kirshbaum, JJ., concur.

Opinion is modified as follows:

Beginning at page 2, the 20th line from the top of the page, the following additons (shown by capitalization) are made:

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property owners, and the notice fulfilled the statutory requirements, no further "warning" was required.

WE HAVE CONSIDERED PLAINTIFF'S OTHER ARGUMENTS AND FIND THEM TO BE WITHOUT MERIT.

The judgment is affirmed.

Judge Smith and Judge Kirshbaum concur.

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We have considered plaintiff's other arguments and find them to be without merit.

The judgment is affirmed.

Judge Smith and JUDGE KIRSHBAUM concur.

APPENDIX D.

Hearing/Oral Judgment

In the District Court, Morgan County.

Rainsford J. Winslow, Plaintiff, v. Morgan County, Colorado, by and through its County Commissioners, Robert Bauer, John Lindell and Henry Kammerzell, Defendants. No. 80 CV 221.

Hearing in this matter was held on Tuesday, November 10, 1981.
Before: The Honorable Carl J. Absmeier, District Court Judge, Thirteenth Judicial District.

The following is the applicable portions of the Judgment concerning the disqualification of County Attorney E. Ord Wells, and the Trial Court remarks granting Morgan County Summary Judgment Motion presented by The Honorable Judge Carl J. Absmeier. (From Reporters Transcript, Page 21, Line 10, to Page 26, Line 18.)

THE COURT: Mr. Winslow and Mr. Wells, before any ruling is made on the Motion for Summary Judgment, I need to know whether, Mr. Winslow, it is your wish to present the Motion to Disqualify Mr. Wells or if you wish to have any oral argument or if you wish me to rule on it based on the file at this time. I think thats probably one of the areas that it's hard to give an exact order in which these motions should be

heard, but that is still a viable motion in this file. Is there any argument on that, sir?

MR. WINSLOW: Well, the only thing I would say, your Honor, I think that -- I assume your Honor has read the Brief?

THE COURT: I have.

MR. WINSLOW: I don't think I could add any more to it. I have the feeling Mr. Wells is in conflict of interest. I have expressed that, I have explained why, and the Court will have to rule.

THE COURT: All right, sir. Mr. Wells, any statement to that?

MR. WELLS: I'll stand on the record.

THE COURT: Mr. Winslow, I think that as just a remark before I get into the area of the Motion on Summary Judgment, the ruling on the Motion to Disqualify will be -- the Motion will be denied, but I wanted to comment first of all on your presentation of your case in this matter. I have noted eight different points that you have advanced for the notice itself being improper

and you have presented them very well.

The problem as I preceive it, or the reason we are in this Courtroom today is because I really think that Mr. Wells put his finger on it, that the results of that meeting are what -- what are disturbing to you and again, perhaps very rightfully so, I can't get into that area, I'm not familiar with it, but obviously something was done as a result of that meeting that the notice appeared on August 13, of 1980, some action was taken by the Board of County Commissioners that is very disturbing to you, and I am not considering whether that action is rightly disturbing to you or wrongly disturbing, it obviously is something that bothers you, but that is not the area we are concerned with.

You put your finger on it very clearly when you said the Holly case is the primary area we have to consider in this matter and under that case I must make the determination to, either after a trial or the basis of arguments on the Motion for Summary

Judgment that the notice is unambiguous and to a layman, as you have indicated, not a sophisticated person, to use your terminology, and does contain sufficient information that a layman can be informed that his property rights may be affected and time and place of hearing and that is certainly not at issue, and that the zoning and/or the subdivision matters are to be considered at that hearing and that the subject matter of the action contemplated we have to define what are we talking about what are we going to talk about at that hearing and then some indication of the notice or of the type of changes that are contemplated.

So I perceive this thing as a matter of law, that the Court has to make a decision on it, it is not a factual matter. It is pure and simple whether or not the notice of the 11th of August, dated the 11th,

published on the 13th, 1980, meets those criteria that the Supreme Court says has to be met, and they basically state it in the Holly case and there are several recent cases after the Holly case wherein it is cited. So I feel that is a proper area for Summary Judgment.

In other words, the Court can find, and does find there are no factual issues, it is purely a matter of law, and considering each one of those criteria that the Holly case laid out, I do find that the notice was published in accordance with the statute. Even though that is striclty set forth in the Holly case, it certainly is impliedly there.

As to ambiguity, this is a matter that, again testing it against the criteria that have been forth in the case law, I feel it is not ambiguous and that it does contain sufficient information that a layman can

understand that his property rights will be affected -- may be affected by actions taken after or at that meeting. There was no question that zoning and subdivision changes were contemplated.

Now, the point you raised, Mr. Winslow, as to the fact that the -- the zoning regulation, Morgan County zoning regulations, I believe you said of 1975 was the contemplated change, and here the notice ultimately says zoning resolution and accompanying maps of Morgan County. I recognize the points you are making that apparently there was an existing zoning, a zoning and subdivison regulation and that the notice might well have put in caps or in quotes the tital of that zoning regulation that they were contemplating changes to and the title of that subdivison regulation that they were contemplating changes to, but again there was a question of reasonable-

ness. It says, "Morgan County" and while they may not have used the exact legal title of that particular resolution, again there is sufficient information there that a person could tell what was meant.

Now, again, we have indicated, and you have agreed on that that there is no problem about specific time and place. The nature of the change, could that be ascertained by that notice? Not by the notice itself, perhaps to the full extent desired, but again there has to be a balancing there of practicality as against the fact that perhaps the governing board was unaware of what changes they might have had so the nature of the change is all they have to tell you of and that they have indicated there will be revisions and amendments to the subdivision regulations, revisions and amendments to the zoning resolution, they will be considered at that meeting.

Now, what the actual results of that meeting will be, again, is no concern to the Court at this time. The fact you were there, perhaps even raises an issue that has not been raised and that is one of standing to object to the form of the notice since obviously it did reach its intended person in your own person.

The motion, therefore, I am going to grant for summary judgment, which leaves you a clear cut, Mr. Winslow, and the reason I'm addressing my remarks specifically to you is that I recognize you are not represented by counsel in this matter, and leaves you a clear cut issue that you can appeal this to the Appellate Courts based on a narrow issue and that issue is easily resolved by the Appellate Court that either I am wrong in my interpretation that the notice was legally adequate or I am right in it, and you can -- there is no argument as to the

publication of that notice nor what notice we are talking about. So the basic effect of the granting of the Motion for Summary Judgment, I think eliminates the remaining motions as they are moot at this point and, again, I rule nothing, Mr. Winslow, with regard to the specific acts that were taken at and after that meeting.

In other words, if you have any remedies left to protest that type of action you are free to do so either with a lawsuit or perhaps a -- the first base usually is an appeal to the administrative agency involved, perhaps you have exhaused that, and whatever the avenue you have to protest the action taken by the Board of County Commissioners this is open. I am not ruling with regard to that in any respect.

APPENDIX E.

Colorado Statute

Taken from the Colorado Revised Statutes, Section covering County Government Planning and Building Codes.

30-28-116. Regulations may be amended.

From time to time the board of county commissioners may amend the number, shape, boundaries, or area of any district, or any regulations of or within such district, or any other provisions of the zoning resolution. Any such amendment shall not be made or become effective unless the same has been proposed by or is first submitted for the approval, or suggestions of the county planning commission. If disapproved by such commission within thirty days after such submission, such amendment, to become effective, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commis-

sioners. Before finally adopting any such amendment, the board of county commissioners shall hold a public hearing thereon, and at least thirty days' notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the county.

Source: L. 39, p. 301, § CSA. C. 45A. § 15; CRS 53, § 106-2-15; C.R.S. 1963, § 106-2-15.

APPENDIX F.

Motion of County
To Strike Pleading and Issues

(Applicable Portion)

In the Court of Appeals for the State of Colorado.

Rainsford J. Winslow, Plaintiff-Appellant, v. Morgan County Commissioners; Robert Bauer, John Lindell and Henry Kammerzell, Defendants-Appellees. No. 81 CA 1268.

Dated: April 7, 1982. Denied: May 11, 1982.

II.

ISSUES

Winslow, in his Opening Brief, raises two

matters which are not issues subject to review by this Court which are as follows:

DID THE TRIAL COURT ERR IN DETERMINING THAT THE NOTICE REGARDING A HEARING FOR ZONING/SUBDIVISION CHANGES IN MORGAN COUNTY WAS ADEQUATE?

DID THE TRIAL COURT ERR IN NOT DISQUALIFYING COUNTY ATTORNEY E. ORD WELLS FOR CONFLICT OF INTEREST, PREJUDICIAL CONDUCT, AND VIOLATIONS OF THE CODE OF PROFESSIONAL RESPONSIBILITIY AS IT PERTAINS TO ATTORNEYS IN COLORADO?

APPENDIX G.

Hearing/Oral Judgment

In the District Court, Morgan County.

Rainsford J. Winslow, Plaintiff, v. Morgan County, Colorado, by and through its County Commissioners, Robert Bauer, John Lindell and Henry Kammerzell, Defendants. No. 80 CV 221.

Hearing in this matter was held on Tuesday, November 10, 1981.

Before: The Honorable Carl J. Absmeier, District Court Judge, Thirteenth Judicial District.

Applicable portion of Transcript of November 10, 1981, regarding U.S. Constitutional rights regarding "due process," as presented to the Trial Court by Rainsford J. Winslow. (Page 11, Lines 9-15.)

We all know that people, when it comes to their property are given the opportunity of due process of law, meaning that they are given proper notice and they are told what the problem could or could not be, and I defy anybody to determine that their property rights, when it's up in such a general basis could possibly be assessed of what was going to be done to them.

APPENDIX H.

Morgan County Opposition Brief

In the Supreme Court of the State of Colorado.

Rainsford J. Winslow, Petitioner, v. The Board of County Commissioners, Morgan County, State of Colorado, Robert Bauer, Commissioner, Henry Kammerzell, Commissioner, John Lindell, Commissioner, Respondent. No. 82 CSC.

Dated September 7, 1982.

COMES NOW the Respondent and opposes the Petition for Writ of Certiorari upon the following grounds:

1. This matter is not one requiring sound judicial discretion since there is nothing of special importance. There is no constitutional question presented. No statutory interpretation is required since such has been determened by prior court decisions.

APPENDIX I.

Winslow Reply Brief

(Applicable Portion)

In the Supreme Court of the State of Colorado.

Rainsford J. Winslow, Petitioner, v. The Board of County Commissioners, Morgan County, State of Colorado, Robert Bauer, Commissioner, Henry Kammerzell, Commissioner, John Lindell, Commissioner. No. 82 SA 310.

Dated: September 9, 1982.

COMES NOW, Rainsford J. Winslow, pro se, responding to Morgan County's Opposition Brief. Petitioner will do so on a paragraph by paragraph basis.

PARAGRAPH NO. 1.

1. It is argued that there was a statutory question here which is the cited Holly Case, an annotated case, following C.R.S. 30-

(1973).

2. It is also argued that constitutional right of "due process" does enter this picture, and while not previously argued, (in Winslow Opening Brief) Morgan County did bring it up. It is believed that the reason the Colorado Supreme Court ruled the way they did in the Holly Case was to give individuals the opportunity for due process since property values can be drastically changed by a change in zoning or re-zoning. This is certainly a matter of special importance.

APPENDIX J.

Request

In the Court of Appeals, State of Colorado.

Rainsford J. Winslow, Plaintiff-Appellant, v. Morgan County Commissioners, et al., Defendants-Appellees. No. 81 CA 1268.

Dated: August 2, 1982. Filed: August 3,1982

Request For Decision Regarding Disqualification of Attorney E. Ord Wells.

COMES NOW, Rainsford J. Winslow, Pro Se, requesting of this Honorable Court to make

a decision relative to the disqualification of County Attorney E. Ord Wells. This Court will recall that Attorney Wells made a Motion To Strike the disqualification matter, but this Court denied his motion.

Winslow pointed out that he had spent more than $50 for the record of this Motion To Disqualify Attorney Wells and this Court agreed that this matter would be an issue in this case.

Here is a summary of why Winslow feels County Attorney Wells should be disqualified as the Attorney for Morgan County:

1. Prejudicial conduct toward the Winslows by Attorney Wells dealing with County Affairs.
2. Violation of certain Colorado Canons regarding the professional conduct of an attorney.
3. It is alleged that Attorney Wells has a conflict of interest be-

cause he owns subdividable land next to Morgan Heights, that property owned by the Winslows.

4. It is represented that Attorney Wells is acting, has acted in a manner that gives the appearance of impropriety.

The entire motion regarding this matter speaks for itself, so there is no use dwelling on anything further. However, Winslow feels that this Court should make a decision and prays that they will disqualify Attorney Wells as Morgan County Attorney.

APPENDIX K.

Request

In the Court of Appeals, State of Colorado.

Rainsford J. Winslow, Plaintiff-Appellant, v. Morgan County Commissioners, et al., Defendants-Appellees. No. 81 CA 1268.

Dated: August 2, 1982. Denied: August 19, 1982.

Request For Rehearing Regarding Recent Judgment.

COMES NOW, Rainsford J. Winslow, Pro Se, in somewhat of a dilemna. This Honorable Court ruled on the major issue in the above matter, namely proper NOTICE. However, this Court did not rule regarding the disqualification matter as to County Attorney E. Ord Wells, which this Court did permit to be an issue.

Winslow wants to be timely in making a request for a rehearing, but does not at this point want to put all of the arguments for the rehearing in now, because he wants to address issues for which the Court has decid-d, and the Court has not decided as to the Wells disqualification.

Thus, he prays to this Court to permit a more comprehensive motion for rehearing on the Notice issue and if this Court would

determine that Attorney Wells not be disqualified, that the entire matter be addressed at one time and not "piece mealed." Naturally, if this Court finds that Attorney Wells should be disqualified, then Winslow would proceed with a Writ of Certiorari.

Since there does not seem to be any deadline for filing a motion for rehearing, Winslow wants to be timely and not forfeit his rights, thus this particular motion.

Winslow will check with the Clerk of the Court of Appeals to see if this matter follows procedures in this type of situation where actually two issues were to be decided and only one was decided.

APPENDIX L.

No. 18,762.

HOLLY DEVELOPMENT, INC. *v.* BOARD OF COUNTY COMMISSIONERS OF ARAPAHOE COUNTY.

(342 P. [2d] 1032)

Decided July 27, 1959. Rehearing denied August 24, 1959.

Certiorari to review action of Board of County Commissioners in altering zoning regulation relating to plaintiff's property. Judgment for defendant.

Reversed and Remanded
With Directions.

1. CERTIORARI — *Remedy — When Proper.* Where the question is whether a public board or commission has exceeded its jurisdiction or abused its discretion, certiorari is the proper remedy to obtain a review of its action.

2. NOTICE—*Zoning—Hearing—Requisites.* A notice must be clear, definite, explicit and not ambiguous; and unless its meaning can be apprehended without explanation or argument, it cannot be said to be clear.

3. ADMINISTRATIVE LAW—*County Commissioners—Hearing—Notice—Zoning Regulation.* Where a notice relating to a proposed change in a zoning resolution was insufficient, ambiguous, misleading and unintelligible to the average citizen affected thereby, it conferred no jurisdiction on the county commissioners to proceed with any hearing thereunder, even though some parties affected appeared against the proposal; such proceeding being without jurisdiction was arbitrary and capricious.

4. *Notice—Hearing—Appearance—Effect.* Where notice of a hearing of a proposed zoning change was insufficient and misleading, it was not a mere irregularity in the service of a personal notice which may be waived.

5. NOTICE—*Purpose—Failure to Specify.* A notice of a proposed change in a county zoning resolution which failed to give the correct name of the present zone or of the proposed future zone, failed to comply with the mandatory conditions precedent to the

proper exercise of the power delegated to the Board of County Commissioners by the statute. (C.R.S. '53, 106-2-1, et seq.)

6. ZONING—*County Commissioners—Resolution—Amendment—Map—Statute.* C.R.S. '53, 106-2-15, permitting amendment to a zoning plan without first having maps prepared, does not sanction in that category a readopted or comprehensive amendment of the original zoning plan which affects all zoned areas, the legislative intent being that over-all plans or changes should be given such publicity as will reasonably inform the owners affected, and is governed by 106-2-11 dealing with the adoption of a zoning plan.

7. *Officers—Duty—Information.* It is the duty of zoning officials to have information available in a public office to the end that those affected can determine their rights and privileges, as well as the duties and restrictions applicable to them.

8. *Estoppel—Officers.* Estoppel does not operate to prevent a legislative body or commission from carrying out its public functions, and where conditions warrant changes in administrative determinations, it is their duty to act accordingly.

9. *County Commissioners—Resolution—Amendment—Discretion—Abuse.* Where the board of county commissioners in amending a county zoning resolution, failed to give consideration to the need for reasonable stability in zoning regulations and the requirement of certainty of description as well as proper notice of the proposed change, it acted arbitrarily and capriciously, abused its discretion and exceeded its jurisdiction.

Error to the District Court of Arapahoe County.
Hon. Martin P. Miller, Judge.

Mr. JOSEPH F. LITTLE, Mr. ROBERT H. KILEY, for plaintiffs in error.

Mr. J. SHERMAN BROWN, Mr. RICHARD N. GRAHAM, for defendant in error.

En Banc.

MR. JUSTICE SUTTON delivered the opinion of the Court.